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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,175	03/19/2004	Brian K. Beesley	16317.13	7418

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EXAMINER

SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/805,175

Applicant(s)

BEESLEY, BRIAN K.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention:

3. In independent claim 1, applicant amended the phrase "upper edge of the goblet is not" to read "upper edge of is not", making unclear what is required.

4. In claim 1, there is lack of antecedent basis for "the plane defined by said open upper edge...". Whereas previously the claim recited "a plane defined on one end of the longitudinal axis by said open upper end", this phrase has been deleted in the current amendment. It is unclear if the opening is limited to a shape defining a plane, or if other shapes are intended to be within the scope of the claim. It is unclear if the claim makes any requirements relative to any structure defining this plane that may or may not be required.

5. In claim 8, there is lack of antecedent basis for "the goblet".

6. In claim 9, there is lack of antecedent basis for "the plane defined by said open upper edge". Whereas the claim previously recited "a plane defined on one end of the longitudinal axis by said open upper end of the goblet", this phrase has been deleted in the current amendment. It is unclear if the opening is limited to a shape defining a plane, or if other shapes are intended to be within the scope of the claim. It is unclear if

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the claim makes any requirements relative to any structure defining this plane that may or may not be required.

7. Regarding claim 23, there is lack of antecedent basis for "the goblet" recited in lines 4-5.

***Claim Rejections - 35 USC §§ 102 and 103***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Note: while it is unclear what is being claimed in claims 1-23, all claims have been considered with regard to the prior art to the extent possible.

11. Regarding claims 1-22, claims 1, 8 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by Daniels (US 6,527,433) and in the alternative under 35 U.S.C. 103(a) as being unpatentable over Daniels (US 6,527,433) in view of Brewer (US 1,930,948).

Because of the indefinite nature of these claims, it is unclear whether section 102 or 103 is the appropriate basis for rejection. Claims 2-7 and 10-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniels (US 6,527,433) in view of Brewer (US 1,930,948). Daniels ('433) discloses a device comprising goblet (50) which

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includes a container wall, the container wall having an upper edge forming an opening which defines an open upper end of the container wall and having a lower opening (see col. 4, lines 15-21), said container wall having a longitudinal axis substantially centered within said container wall and a mixing assembly (38,46) that comprises a base cap (46) to close said lower opening of the container wall, said base cap having a lower horizontal edge, said base cap being removably couplable to the container wall (see col. 3, line 66 to col. 4 line 2), a plurality of blades (42) disposable within the container so as to be centered near the bottom of the container wall, said blades being spaced away from the sides of the container wall and mounted about a single rotational axis (see Fig. 2).

Claim 1 makes an unclear statement regarding "the plane defined by said open upper edge", where as the latest amendment appears to delete the requirement for such a planar open upper edge. Claim 9 makes a similar unclear statement. In any case, to the extent that the claim requires a longitudinal axis of the container to be "off-axis" with respect to the rotational axis (and it is not at all clear that there is such a requirement), Brewer (US 1,930,948) is relied upon for such a teaching. Brewer ('948) teaches a device comprising a container (10) having a longitudinal axis (A—A), a mixing assembly (18,23,24,25) having a rotational axis (B—B); said axes intersecting at an acute angle (see Fig. 2). It would have been obvious to one of ordinary skill in the art to made the axes of Daniels ('948) offset as taught by Brewer ('948) to achieve the benefit of more thorough mixing explained on page 2, lines 9-50). Daniels ('433) further discloses a base (18) having a motor (22) capable of turning a drive mechanism (26) extending therefrom, the container being disposable on the base with the drive

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mechanism engagable with the mixing assembly; a spout (80), coupled to the container; a cup indentation (100) formed in the base at a position underneath the spout when the container is disposed on the base, the cup indentation extending into the base and extending vertically from the spout through a bottom of the base (see Fig. 2); and a pair of protrusions (104), extending from the base with the cup indentation therebetween.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniels (US 6,527,433) in view of Brewer (US 1,930,948). Regarding claim 23, Daniels (433) discloses a goblet device comprising a container wall (50) having an upper edge forming an opening which defines and open upper end of the goblet, and having a lower opening (see col. 4, lines 15-21), said container wall having a longitudinal axis substantially centered within said container wall; and a mixing assembly (38,46) that comprises a base cup (46) to close said lower opening of the container wall, said base cup being removably couplable to the container wall (see col. 3, line 66 to col. 4 line 2), a plurality of blades (42) disposable within the container wall so as to be centered near the bottom of the container wall, said plurality of blades being spaced away from the sides of the container wall and mounted about a single rotataional axis (see Fig. 2). The claim off axis relationship between the container and

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mixing assembly is not disclosed. Brewer ('948) teaches a device comprising a container (10) having a longitudinal axis (A—A), a mixing assembly (18,23,24,25) having a rotational axis (B—B); said axes intersecting at an acute angle (see Fig. 2). It would have been obvious to one of ordinary skill in the art to make the axes of Daniels ('948) offset as taught by Brewer ('948) to achieve the benefit of more thorough mixing explained on page 2, lines 9-50). Regarding claim 24, Daniels (433) discloses a device comprising a base (18) and a motor (22); and a goblet device, mountable on the base, comprising a container wall (50) having an upper edge forming an opening which defines an open upper end of the goblet, and having a lower opening (see col. 4, lines 15-21), said container wall having a longitudinal axis substantially centered within said container wall; and a mixing assembly (38,46) that comprises a base cup (46) to close said lower opening of the container wall, said base cup being removably couplable to the container wall (see col. 3, line 66 to col. 4 line 2), a plurality of blades (42) disposable within the container wall so as to be centered near the bottom of the container wall, said plurality of blades being spaced away from the sides of the container wall and mounted about a single rotational axis (see Fig. 2). The claim of axis relationship between the container and mixing assembly is not disclosed. Brewer ('948) teaches a device comprising a container (10) having a longitudinal axis (A—A), a mixing assembly (18,23,24,25) having a rotational axis (B—B); said axes intersecting at an acute angle (see Fig. 2). It would have been obvious to one of ordinary skill in the art to make the axes of Daniels ('948) offset as taught by Brewer ('948) to achieve the benefit of more thorough mixing explained on page 2, lines 9-50).

***Response to Arguments***

14. Applicant's arguments are moot in view of the new grounds of rejection.

***Conclusion***

15. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS